

REMARKS

In view of the above amendments and following remarks, reconsideration and allowance of the application are respectfully requested.

I. Status Summary

Claims 59-70 are currently pending in the application, with claims 59, 61, 63, 65, and 68 being independent claims. Claims 57 and 58 are cancelled; claims 59 and 61 are amended; and claims 63-70 are added, in accordance with the above amendments.

The Office Action rejected claims 57-62 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Number 4,267,710 to Imamichi.

II. Discussion Of Claims 59 and 60

Independent claim 59 recites a method of manufacturing a textile for an article of apparel. The Office Action rejected independent claim 59 as being anticipated by Imamichi. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Among other elements, independent claim 59 recites that (a) a majority of each of the first yarn and the second yarn are formed from synthetic polymer filaments and (b) nodes extend outward from the second surface of the textile. As discussed in greater detail below, neither of these elements are found in Imamichi.

A. Synthetic Polymer Filaments

Imamichi discloses a double knit fabric incorporating both polyester yarns and natural fiber yarns. As stated in Imamichi:

In accordance with the present invention, the plain stitch is made using the synthetic fiber yarns such as processed polyester yarns and the like to obtain a front fabric...while a natural fiber yarns such as cotton is used for the rear fabric (Imamichi, column 2, lines 23-28).

As a rationale for utilizing both synthetic fiber yarns and natural fiber yarns in the fabric, Imamichi states:

Synthetic yarns such as processed polyester yarns...have the characteristic properties of the synthetic fibers such as wear resistance, dyeability, etc., while the conventional natural fiber yarns such as cotton, wool, etc., have the characteristic properties such as hygroscopicity, hand touchness and the like. A double-knit structure that makes use of these yarns on the front and rear fabrics, respectively to provide all the above properties, is believed to be the most suitable and is greatly in demand (Imamichi, column 1, lines 11-20).

Accordingly, Imamichi effectively discloses a fabric with synthetic fiber yarns generally located adjacent to one surface of the fabric and natural fiber yarns generally located adjacent to another surface of the fabric.

In contrast with Imamichi, independent claim 59 recites that a majority of each of the first yarn and the second yarn are formed from synthetic polymer filaments. Whereas Imamichi utilizes a natural fiber yarn (i.e., cotton or wool), independent claim 59 recites yarns formed from synthetic polymer filaments.

B. Nodes

Independent claim 59 also recites a configuration wherein nodes extend outward from the second surface of the textile. More particularly, independent claim 59 recites that the textile is modified from a first structure to a second structure upon exposure to the water. The first structure has a configuration wherein the first surface and the second surface are substantially planar, and the second structure has a configuration wherein a plurality of nodes extend outward from the second surface of the textile. In contrast, Imamichi does not teach or suggest a configuration wherein nodes are formed on a surface of the fabric. Moreover, the concept of nodes forming on a surface of a fabric is entirely absent from the disclosure of Imamichi.

In order to overcome this deficiency in Imamichi, the Office Action improperly relies upon extrinsic evidence. As stated in the Office Action:

When the water exposed to it, the hydrophilic yarn (cotton) would absorb water, thus increasing in size as stated above. This reaction modifies the first structure of the fabric to a second when exposed to water as claimed. The increased diameter of the cotton yarn would 'project' nodes onto the surface of the fabric, as the cotton yarns would be larger in diameter thus pushing the synthetic yarns outward creating nodes (Office Action mailed 29 October 2008, page 3, lines 5-10).

Accordingly, although Imamichi is silent as to the concept of nodes, the Office Action asserts that nodes would form on the fabric of Imamichi. Moreover, the Office Action states that "The applicant claims no other method steps that differentiate from the device of Imamichi and there for must perform in the same manner" (Office Action mailed 29 October 2008, page 2, lines 8-10). Additionally, as stated in a prior Office Action, the "Examiner feels that the art of Imamichi would perform the same way (having nodes) as according to the applicant, they have the same structure" (Office Action, mailed 16 October 2007, page 2, lines 8-10).

To serve as an anticipation when the reference is silent about the asserted inherent characteristic, such gap in the reference may be filled with recourse to extrinsic evidence. Such evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. *Continental Can Co. USA v. Monsanto Co.*, 948 F.2d 1264, 1268, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991). While extrinsic evidence may be utilized to fill a gap in a prior art reference (such as Imamichi), *the extrinsic evidence must make clear that (a) the missing descriptive matter is necessarily present in the thing described in the reference and (b) it would be so recognized by persons of ordinary skill.* A mere statement that Imamichi "must perform the same manner" as the textile of independent claim 59 is insufficient to overcome the deficiency in the disclosure of Imamichi.

As another matter, characterizations relating to Imamichi in the Office Action are opposite to the recitation of independent claim 59. The Office Action states that “as the cotton yarns would be larger in diameter thus pushing the synthetic yarns outward creating nodes.” The Office Action appears to assert, therefore, that the nodes would form on the surface where the synthetic yarns are located, as opposed to the surface where the natural yarns are located. Independent claim 59, however, recites that the second structure has a configuration wherein a plurality of nodes extend outward from the second surface of the textile. Given that the second yarn, which dimensionally-transforms in the presence of water, is concentrated at the second surface, independent claim 59 recites an opposite configuration. That is, the Office Action asserts that nodes form on the surface of Imamichi where relatively dimensionally-stable yarns are concentrated, whereas independent claim 59 recites that the nodes form on the surface where the yarn that dimensionally-transforms in the presence of water is concentrated.

Based upon the above discussion, the Applicants respectfully submit that independent claim 59 is allowable over Imamichi. In addition, claim 60 should be allowable for at least the same reasons.

III. Discussion Of Claims 61 and 62

Independent claim 61 recites a method of manufacturing a textile for an article of apparel. The Office Action rejected independent claim 61 as being anticipated by Imamichi. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Among other elements, independent claim 61 recites (a) yarns formed from polymer filaments and (b) nodes extending outward from only a second surface of the textile. Neither of these elements are found in Imamichi.

A. Polymer Filaments

As discussed above with respect to independent claim 59, Imamichi effectively discloses a fabric with synthetic fiber yarns generally located adjacent to one surface of

the fabric and natural fiber yarns generally located adjacent to another surface of the fabric.

In contrast with Imamichi, independent claim 61 recites that a first yarn is formed from a plurality of first polymer filaments, a second yarn is formed from a plurality of second polymer filaments, and a material of the first polymer filaments is different than a material of the second polymer filaments. Whereas Imamichi utilizes a natural fiber yarn (i.e., cotton or wool), independent claim 59 recites yarns formed from polymer filaments.

B. Nodes

Independent claim 61 also recites a configuration wherein nodes extend outward from only a second surface of the textile. More particularly, independent claim 61 recites that the textile is modified from a first structure to a second structure upon exposure to the water. The second structure has a plurality of nodes in comparison with the first structure, and the nodes extend outward from only the second surface of the textile. In contrast, Imamichi does not teach or suggest a configuration wherein nodes are formed on a surface of the fabric. Moreover, the concept of nodes forming on a surface of a fabric is entirely absent from the disclosure of Imamichi. While extrinsic evidence may be utilized to fill a gap in a prior art reference (such as Imamichi), *the extrinsic evidence must make clear that (a) the missing descriptive matter is necessarily present in the thing described in the reference and (b) it would be so recognized by persons of ordinary skill.* A mere statement that Imamichi “must perform the same manner” as the textile of independent claim 61 is insufficient to overcome the deficiency in the disclosure of Imamichi.

As another matter, characterizations relating to Imamichi in the Office Action are opposite to the recitation of independent claim 61. The Office Action states that “as the cotton yarns would be larger in diameter thus pushing the synthetic yarns outward creating nodes.” The Office Action appears to assert, therefore, that the nodes would form on the surface where the synthetic yarns are located, as opposed to the surface where the natural yarns are located. Independent claim 61, however, recites that the second structure has a configuration wherein a plurality of nodes extend outward from

only the second surface of the textile. Given that the second yarn, which dimensionally-transforms in the presence of water, is concentrated at the second surface, independent claim 61 recites an opposite configuration. That is, the Office Action asserts that nodes form on the surface of Imamichi where relatively dimensionally-stable yarns are concentrated, whereas independent claim 61 recites that the nodes form on the surface where the yarn that dimensionally-transforms in the presence of water is concentrated.

Based upon the above discussion, the Applicants respectfully submit that independent claim 61 is allowable over Imamichi. In addition, claim 62 should be allowable for at least the same reasons.

IV. Discussion Of Claims 63 and 64

Independent claim 63 recites a method of manufacturing a textile. Among other elements, independent claim 63 includes (a) selecting a first yarn including a plurality of filaments formed from a first synthetic polymer material and (b) selecting a second yarn including a plurality of filaments formed from a second synthetic polymer material that is different than the first synthetic polymer material.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). As discussed above, Imamichi effectively discloses a fabric with synthetic fiber yarns generally located adjacent to one surface of the fabric and natural fiber yarns generally located adjacent to another surface of the fabric. Imamichi does not disclose, therefore, two yarns that are each formed from different synthetic polymer materials.

Based upon the above discussion, the Applicants respectfully submit that independent claim 63 is allowable over Imamichi. In addition, claim 64 should be allowable for at least the same reasons.

V. Discussion Of Claims 65-67

Independent claim 65 recites a method of manufacturing a textile. Among other elements, independent claim 65 includes selecting a first yarn, and also selecting a

second yarn including a combination of (a) moisture-absorptive polyester filaments and (b) a plurality of polymer filaments with a lesser moisture-absorbance than the polyester filaments. That is, the second yarn includes both moisture-absorptive polyester filaments and polymer filaments with a lesser moisture-absorbance.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The concept of a yarn having filaments with different moisture-absorbance properties is absent from Imamichi.

Based upon the above discussion, the Applicants respectfully submit that independent claim 65 is allowable over Imamichi. In addition, claims 66 and 67 should be allowable for at least the same reasons.

VI. Discussion Of Claims 68 and 69

Independent claim 68 recites a method of manufacturing a textile. Among other elements, independent claim 65 includes selecting a first yarn, and also selecting a second yarn including a combination of (a) a plurality of first filaments formed from a first polyester material and (b) a plurality of second filaments formed from a second polyester material, the first polyester material having a higher moisture-absorbance than the second polyester material. That is, the second yarn includes polyester filaments with different moisture-absorbance properties.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The concept of a yarn having polyester filaments with different moisture-absorbance properties is absent from Imamichi.

Based upon the above discussion, the Applicants respectfully submit that independent claim 68 is allowable over Imamichi. In addition, claim 69 should be allowable for at least the same reasons.

VII. Conclusion

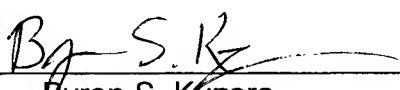
In view of the foregoing, the Applicants respectfully submit that all claims are in a condition for allowance. The Applicants respectfully request, therefore, that the rejections be withdrawn and that this application now be allowed.

This Amendment is being timely filed on 14 January 2009. Should fees be deemed necessary for consideration of this Amendment, such fees are hereby requested and the Commissioner is authorized to charge deposit account number 502846 for payment. If anything further is desirable to place the application in even better form for allowance, the Examiner is respectfully requested to telephone the undersigned representative at 503.222.5382.

Plumsea Law Group, LLC
10411 Motor City Drive, Suite 320
Bethesda, MD 20817
Telephone: 301.365.9040

Dated: 14 January 2009

Respectfully Submitted,


By: Byron S. Kuzara
Registration Number 51,255